



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Room 029 State Capitol, Denver, CO 80203-1784
Phone: (303) 866-3521 • Fax: (303) 866-3855
lcs.ga@state.co.us • leg.colorado.gov/lcs

Memorandum

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TO: Interested Persons

FROM: Erin Reynolds, Principal Fiscal Analyst, 303-866-4146
Aaron Carpenter, Fiscal Analyst, 303-866-4918
Matt Bishop, Fiscal Analyst, 303-866-4796

SUBJECT: Considerations in Fiscal Notes for Bills with Criminal Justice System Impacts

Summary

This memorandum provides an overview of issues considered by fiscal analysts for bills that impact the criminal justice system. Specifically, it provides an overview of Colorado's crime classifications and sentencing ranges, and of criminal justice impacts by state or local government agency. The memorandum has been updated for the 2022 legislative session, and includes changes to misdemeanor and petty offense charges that take effect on March 1, 2022.

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Crime Classifications and Sentencing

Under Colorado law, criminal offenses are classified by type, including felonies, misdemeanors, drug offenses, petty offenses, civil infractions, traffic offenses, and traffic infractions. The seriousness of a particular crime determines the classification and the potential sentence that may be imposed on an offender convicted of that crime. The following section describes the various crime classifications used in Colorado law, the sentencing ranges for crimes in these categories, and provides fiscal analysis considerations and limitations.

Felonies

There are 6 felony classifications ranging from the most serious felonies, class 1, to the least serious felonies, class 6. State law specifies the sentencing and fine penalty range for felonies. With some exceptions, offenders convicted of a felony may be sentenced to a term of imprisonment in the Department of Corrections (DOC) and required to pay a fine as shown in Table 1. After release from prison, persons convicted of a felony serve a mandatory period of parole. Additionally, some felonies are unclassified and subject to penalties outlined in statute.

Table 1
Felony Sentence and Fine Penalty Ranges

Felony Class	Minimum Prison Sentence	Maximum Prison Sentence*	Mandatory Parole	Fine Penalty Range
Class 1	Life imprisonment			
Class 2	8 years	24 years	3 or 5 years**	\$5,000 to \$1,000,000
Class 3	4 years	12 years	5 years	\$3,000 to \$750,000
Class 4	2 years	6 years	3 years	\$2,000 to \$500,000
Class 5	1 year	3 years	2 years	\$1,000 to \$100,000
Class 6	1 year	18 months	1 year	\$1,000 to \$100,000
Unclassified Felonies	Specified in statute	Specified in statute		

Source: Sections 16-11-90 and 18-1.3-401, C.R.S

* The legislature repealed the death penalty in 2020, and it is no longer a maximum sentence for class 1 felony convictions after July 1, 2020.

** Class 2 mandatory parole is three years if the crime was nonviolent and five years if crime was violent.

Crimes of violence. Under state law, certain crimes such as murder, first or second degree assault, kidnapping, and aggravated burglary are considered crimes of violence. The sentence for an offender convicted of a crime of violence is increased to at least the midpoint of the range for an extraordinary risk felony minimum sentence and no more than twice the maximum of the range.¹ For example, the minimum sentence for a class 3 felony crime of violence is increased to 10 years, with a maximum sentence of 32 years. The fine penalty is the same for crime of violence felonies.

Extraordinary risk crimes. Certain crimes, such as aggravated robbery, child abuse, stalking, and human trafficking, are considered in state law to be crimes that present an extraordinary risk to society. The maximum sentence for extraordinary risk crimes is increased as follows:

- by 4 years for class 3 extraordinary risk felonies (16 years maximum);
- by 2 years for class 4 extraordinary risk felonies (8 years maximum);
- by 1 year for class 5 extraordinary risk felonies (4 years maximum); and
- by 6 months for class 6 extraordinary risk felonies (2 years maximum).²

Alternative sentences. Not all persons convicted of a felony will receive a sentence of incarceration in the DOC because state law authorizes alternative sentencing, such as deferred prosecution, deferred sentencing, probation, or community corrections. In addition, state law allows a felony offender to be sentenced to 90 days in county jail as a condition of probation.³ Prison sentences are more likely to be imposed for serious felony convictions, generally class 1 through 4 felonies. The use of alternative sentences is at the discretion of the court and can vary according to the type of crime, circumstances of the crime, and criminal history of the offender. Alternative sentences are more likely, but not always, imposed for less serious felony convictions, generally class 5 and 6 felonies. Sentencing decisions are made by the trial court judge. Local law enforcement and the Colorado Attorney General may also have input into such a decision.

¹ Section 18-1.3-401 (13), C.R.S.

² Section 18-1.3-401 (10), C.R.S.

³ Section 18-1.3-202 (1)(a), C.R.S.

Considerations for felony offenses. For bills with felony offenses, including drug felonies, the fiscal note considers potential DOC impacts by analyzing comparable crime sentencing data obtained from the Judicial Department. The DOC impacts are then calculated if the data show that a DOC sentence is likely to occur for that particular crime. The DOC impacts are estimated using average length of stay in prison and parole data obtained from the Division of Criminal Justice in the Department of Public Safety, multiplied by the DOC daily operation and parole costs. To the extent that alternative sentences are used instead of incarceration in the DOC, estimated fiscal impacts to house a felony offender will decrease. However, because of judicial discretion, the use of alternative sentencing cannot be estimated in most cases.

Misdemeanors

There are two misdemeanor classifications ranging from the most serious, class 1, to the least serious, class 2. Offenders convicted of a misdemeanor may be sentenced to a term of imprisonment in county jail, may be required to pay a fine, or both, as shown in Table 2. Additionally, many misdemeanor crimes are unclassified and subject to penalties outlined in statute. Similar to felonies, sentencing decisions are subject to the discretion of the trial court judge with input from the district attorney, local law enforcement, and the Attorney General, and alternative sentences may be utilized. The use of alternative sentences, such as probation, is more likely for misdemeanor offenders. The maximum consecutive sentence to the county jail for misdemeanor crimes charged in a single case is 24 months.

Table 2
Misdemeanor Sentence and Fine Range

Misdemeanor Class	Minimum Misdemeanor Sentence	Maximum Misdemeanor Sentence
Class 1	6 months, \$500, or both	364 days, \$1,000, or both
Class 2	3 months, \$250, or both	120 days, \$750, or both
Unclassified misdemeanor	Specified in statute	Specified in statute

Source: Section 18-1.3-501, C.R.S

Drug Offenses

Drug offenses may be a felony or misdemeanor and are also classified by level. Drug felonies are classified as levels 1 through 4, with a level 1 drug felony being the most serious. Drug misdemeanors are either a level 1 or level 2 misdemeanor, with a level 1 drug misdemeanor being the most serious. Offenders convicted of a felony drug offense may receive a sentence to the DOC and assessed a fine, as shown in Table 3. Offenders convicted of a misdemeanor drug offense may be sentenced to pay a fine, sentenced to a term of incarceration in county jail, or both, as shown in Table 4. Similar to other felony offenses, the fiscal impact of bills with felony drug offenses is estimated using average length of stay data multiplied by daily DOC operating and parole costs.

Table 3
Drug Felony Sentence and Fine Penalty Range

Drug Felony Level	Minimum Prison Sentence	Maximum Prison Sentence	Mandatory Parole	Fine Penalty Range
Level 1	8 years	32 years	3 years	\$5,000 to \$1,000,000
Level 2	4 years	8 years	2 years	\$3,000 to \$750,000
Level 3	2 years	4 years	1 year	\$2,000 to \$500,000
Level 4	6 months	1 years	1 year	\$1,000 to \$100,000

Source: Section 18-1.3-401.5, C.R.S

Table 4
Drug Misdemeanor Sentence and Fine Penalty Range

Drug Misdemeanor Level	Minimum Sentence	Maximum Sentence
Level 1	6 months, \$500, or both	18 months, \$5,000, or both
Level 2	\$50	364 days, \$750, or both

Source: Section 18-1.3-501, C.R.S

Petty Offenses and Civil Infractions

Petty offenses and civil infractions are crimes considered to be less serious than a felony or a misdemeanor. There are two classifications in state law, the more serious petty offense and the less serious civil infraction. Offenders convicted of a petty offense may be sentenced to up to 10 days in county jail, a fine of up to \$300, or both.⁴ Offenders convicted of a civil infraction may be fined up to \$100. In addition, some petty offenses are unclassified, with penalties specified in statute for each offense.

Traffic Offenses

State law classifies traffic offenses as either a misdemeanor traffic offense or a traffic infraction. There are two misdemeanor traffic offense classifications, class 1 and class 2, with a class 1 traffic misdemeanor being the most serious. There are also unclassified misdemeanor traffic offenses. Sentencing and fine ranges for traffic offenses can be found in Table 5. Offenders may also be required to perform a certain number of hours of community or useful public service.

Table 5
Traffic Misdemeanor Sentence and Fine Penalty Range

Traffic Misdemeanor Class	Minimum Jail Sentence	Maximum Jail Sentence	Fine Penalty Range
Class 1	10 days	1 year	\$300 to \$1,000
Class 2	10 days	90 days	\$150 to \$300

Source: Section 42-4-1701, C.R.S

Serious crimes involving a vehicle may be classified as a felony instead of as a traffic offense using the felony classifications found in Table 1. For example, vehicular homicide is classified in state law as either a class 3 or 4 felony depending on the circumstances of the crime.

⁴ Section 18-1.3-506, C.R.S.

Traffic infractions

Traffic infractions are more minor in nature and are classified as class A, class B, or unclassified infractions, with class A infractions being the most serious. Traffic infractions have a penalty range from \$15 to \$100, unless otherwise provided in statute.⁵ Any penalty collected from a class A or class B traffic infraction is credited to the Highway Users Tax Fund (HUTF), with 65 percent going to the Department of Transportation, 26 percent to counties, and 9 percent to municipalities. Each offender must also pay a surcharge amount as specified in statute. If there is no surcharge specified for an offense, the surcharge is \$4. Additionally, the Department of Revenue can assess points to a driver license, which could lead to the suspension or revocation of the license. Points cannot be assessed to a driver license for any class B traffic infractions.

Fiscal analysis considerations for misdemeanor, class 1 petty offenses, and traffic offenses. Because offenders convicted of a misdemeanor, a drug misdemeanor, or a petty offense may be fined, sentenced to jail, or both, and such decisions are subject to judicial discretion, the exact local government revenue and expenditure fiscal impact of bills addressing such crimes cannot be determined. The fiscal note may provide an estimated range of impact based on comparable crime assumptions. Additionally, alternative sentences may be imposed for misdemeanor and petty offenses, which reduce misdemeanor fiscal impacts.

Criminal Justice Impacts by State or Local Government Agency

The following section explains the types of potential criminal justice impacts that may be found in the fiscal analysis of bills with criminal offenses. State department and local government impacts may vary depending on the circumstances of the crime and prior criminal history of the offender; they may further vary depending on the exact nature of the legislation being considered. Fiscal notes for bills with criminal justice impacts will estimate all such impacts based on the language of the bill and an analysis of comparable crime data.

Judicial Department

Potential fiscal impacts to the Judicial Department are considered and may be identified in the fiscal analysis of bills that have a criminal offense. These include fine and fee revenue, trial court-related expenditures, probation supervision costs, and indigent defense. These potential impacts are described in more detail below.

Revenue. The Judicial Department collects criminal fine and administrative fee revenue from felony, misdemeanor, drug, and petty offense convictions. All such revenue is subject to TABOR.

- **Criminal fines.** Offenders sentenced for felony, misdemeanor, drug, petty offense, and civil infraction crimes may be required to pay a criminal fine penalty imposed by the court. Criminal fine revenue is deposited into a cash fund, and the amount of the fine penalty is at the discretion of the judge with input from the district attorney, and potentially local law enforcement and the Attorney General. While fine penalties can range from as little as \$50 up to \$1 million, actual fines

⁵ Section 42-4-1701, C.R.S.

imposed are based on an offender's ability to pay. The total amount of revenue collected for any given classification of crime is generally less than \$5,000. As a result, for fiscal note purposes, most criminal fines are considered as having a minimal revenue impact, regardless of the classification of the criminal offense resulting from the legislation.

- **Court and administrative fees.** Court and administrative fees may be imposed for a variety of court-related costs, including drug or sex offender surcharges, victim compensation, restitution, supervision costs, and late fees. Revenue collected from court and administrative fees is deposited into the state General Fund, various cash funds, and also shared with the local government in which the crime was committed. Such fees vary based on the circumstances of the crime and may be mandatory or subject to the discretion of the judge. Given this, the exact revenue impacts from court and administrative fees cannot be predicted in the fiscal analysis of bills containing criminal offenses, but are assumed to be minimal based on historical amounts of court fees imposed for similar crimes.
- **Probation fees.** Offenders on probation must pay a probation supervision fee of \$50 per month, which for most bills is considered to be a minimal revenue impact. Offenders sentenced to probation are not released from probation until all court-ordered costs have been paid, and an offender may be placed on unsupervised probation after his or her initial supervised probation period has been served if he or she is still paying court costs.

Trial courts. The trial courts in the Judicial Department hear criminal cases either in a district or county court trial court. District trial courts hear felony criminal cases, while county courts hear misdemeanor and petty offense cases. With the exception of Denver County Court, which has separate constitutional authority and is administered by the City and County of Denver, all county courts are part of the state court system and are administered by the Judicial Department; therefore, county court caseload and fiscal impacts are state Judicial Department impacts.

Caseload and FTE standards. The Judicial Department conducts periodic caseload studies to determine the number of cases various judges are able to handle per year. The fiscal note uses these caseloads and the anticipated number of court filings under a bill to determine appropriate staffing levels. According to the Judicial Department caseload standards, a district court judge can handle between 473 and 511 felony criminal cases per year, while a county court judge can handle between 1,558 and 2,708 misdemeanor criminal cases per year. Because of the ability of the court to manage its criminal docket and the costs associated with adding new judicial officers, fiscal notes generally use a 0.3 FTE threshold for adding new judicial FTE, unless special circumstances exist. Therefore, an appropriation to the Judicial Department will be required for bills with a felony caseload impact greater than 148 cases or a misdemeanor caseload impact of greater than 640 cases. Because additional judges must be added in separate legislation, additional judicial officers identified in a fiscal note are hired as magistrates. Workload for bills with an FTE impact of less than 0.3 FTE can be accomplished within existing appropriations.

Judicial support staff. Support staff is included for any new judicial officer FTE. These staff include a judicial assistant, law clerk, and court reporter for each district court judge, and a judicial assistant and assistant clerk for each county court judge. Therefore, an additional 3.0 FTE are required for each additional 1.0 FTE judicial officer at the district court level and additional 2.0 FTE for each additional 1.0 FTE judicial officer at the county court level.

Operating and capital outlay costs. Adding judicial FTE results in standard operating costs of up to \$2,950 and capital outlay costs of up to \$7,200 per new FTE. In addition, adding new magistrate results in costs for law library materials, travel, and facility costs for courtroom buildout and furnishings, which are \$79,279.

Probation division. Offenders convicted of misdemeanor and petty offenses, as well as felony offenders in limited circumstances, may be sentenced to probation. The Division of Probation in the Judicial Department supervises these offenders. State law does not require specific periods or types of probation, and offenders sentenced may be subject to intensive supervision, regular supervision, or unsupervised supervision. For regular probation, each new regular probation case results in a workload increase of 3.86 hours per month or 46.32 hours per year. The average monthly hours of probation supervision required are determined by the courts and can vary by case, with supervision ranging from less than 0.5 hours per month for offenders that the courts have been deemed to need little supervision to over 15 hours per month for offenders needing significant supervision. For the current year, FY 2020-21, the average cost for regular probation supervision is \$1,662 per year per adult and \$2,852 per year per juvenile. The cost for intensive probation supervision is \$2,249 per adult per year and \$2,853 per juvenile per year. Because it is not known if future offenders will be sentenced to probation and whether regular or intensive supervision will be required, it is generally assumed that additional appropriations for probation supervision, if needed, will be addressed through the annual budget process for bills with a probation workload impact.

Indigent defense. Defendants who cannot afford representation in a criminal case will be appointed a lawyer from either the Office of the State Public Defender (OSPD) or the Office of Alternative Defense Counsel (OADC). Both agencies are housed in the Judicial Department, but operate independently. Costs for both agencies are driven by the number and types of cases with indigent defendants. The OSPD spends an average of \$667 per case, while the OADC had an average cost of \$2,002 in FY 2020-21.⁶ The OSPD hires and uses in-house attorneys for indigent defense, while the OADC contracts with private attorneys to represent indigent defendants and only takes a case if the OSPD has a conflict of interest. The OADC contract attorneys are paid different rates depending on the type of case. Attorneys can be paid around \$80 to \$95 per hour for felony cases, and around \$75 per hour for misdemeanor and traffic cases.⁷ For most bills with a criminal offense, because it is not known when indigent defense will be required and whether or not a conflict of interest will exist, it is assumed that any increase in appropriations for either agency will be addressed through the annual budget process based on actual changes in caseload.

⁶ Joint Budget Committee Staff, Judicial Department Budget Briefing, FY 2022-23

⁷ Office of the Alternative Defense Counsel, FY 2022-23 Budget Request

Department of Corrections

Potential fiscal impacts to the DOC may be identified in the fiscal analysis of bills that include a felony offense. These include prison operating, capital construction, and parole costs, as well as county jail reimbursement impacts. Current law allows the DOC to place certain offenders in private contract prisons, for which no state capital construction costs are incurred. Offenders not placed in a private prison are placed in a state-run prison. Offenders convicted of more serious offenses, typically class 1 and 2 felonies, are most likely to be placed in a state-run prison. More information on these impacts can be found below.

Statutorily required analysis. An offender convicted of a felony offense and sentenced to the DOC will occupy a prison bed. State law requires the General Assembly to consider the need to appropriate funds to cover increased operating, capital construction, and parole costs for five fiscal years when legislation is estimated to increase periods of imprisonment in state correctional facilities.⁸

Operating costs. There are two levels of operating costs at the DOC: one for private-contract prisons and one for state-run prisons.

- **Private prisons.** The state currently has two private prisons in operation, Crowley County Correctional Facility and Bent County Correctional Facility, both operated by CoreCivic. Offenders placed in a private contract prison cost the state an average of \$67.34 per offender, per day, or \$24,577 for a full year. This daily rate includes the per offender direct facility contract rate of \$57.36, with the remainder for medical administration.
- **State prisons.** Offenders placed in a state prison range in costs depending on custody level and facility. The average daily cost is \$152.65 per offender, or \$55,717 for a full year.

For the 2022 session, fiscal notes will assume that changes in prison population under a bill will occur in private prisons, both for bills that increase or decrease periods of incarceration. This assumption is based on the current population trends and expected population management strategies used by the DOC. In FY 2022-23, DOC's operating costs in fiscal notes for bills with felony offenses will be calculated using the daily private prison operating cost (\$67.34) multiplied by the average length of stay expected for the crime. This daily bed rate may be adjusted to account for unique factors in a specific bill or in an affected prison facility or offender population, or the state prison rate may be used if current assumptions on prison population change due to policy decisions or new information affecting where offenders will be placed.

For offenses committed on or after the effective date of a bill, no impact is shown in the first year because of the estimated time for criminal acts to occur, filing of charges, trial, disposition, and sentencing. If any first-year impacts are incurred, it is assumed that any required changes in appropriations will be addressed through the annual budget process.

⁸Section 2-2-703, C.R.S.

Capital construction costs. Fiscal notes will show the estimated capital construction costs for each additional prison bed calculated at \$178,471 per bed. This estimate is based on DOC facility construction costs divided by the number of prison beds in the facility. This amount may be appropriated at the discretion of the General Assembly; however, based on current population trends, fiscal notes will assume that these appropriations will not be made. Because capital construction projects are overseen by the Capital Development Committee, these funds must first be transferred from the General Fund to the Capital Construction Cash Fund and are then appropriated to the Corrections Expansion Reserve Fund. If appropriated, these funds may be used by the DOC for prison construction, expansion, or renovation projects that are approved by the General Assembly.

Parole. Offenders convicted of a felony and sentenced to the DOC will serve a term of parole upon completion of their prison sentence. The cost to supervise an offender on parole is \$17.18 per day, or \$6,271 per year. Parole impacts in fiscal notes with DOC impacts are determined by taking the parole cost per day multiplied by the average parole length of stay for the particular crime as determined and published annually by the Division of Criminal Justice.

County jail reimbursement. The DOC is required to reimburse county jails for holding state prisoners in county jail. State prisoners may be held in county jail post-conviction while awaiting transport to a DOC facility, at the request of a judge before appearing in court, or on a long-term basis under certain contractual agreements. State offenders may also be held in county jail for a parole violation either as punishment or while awaiting a parole revocation hearing or hearing for a new crime. State law requires the state to reimburse county jails for the costs of housing state inmates. Based on a recent Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$63.69.

Department of Public Safety—Community Corrections

Community corrections programs are state-funded and locally administered programs that place offenders in a community housing setting, commonly known as halfway houses. Offenders may be sentenced by the courts directly to a community corrections program or placed in a community corrections program on the recommendation of the executive director of the DOC or the Parole Board. Offenders placed in community corrections are typically felony offenders who have been convicted of a less serious felony, generally a class 4, 5, or 6 felony. Offenders are either in residential placement, where the offender lives at the community corrections facility, or nonresidential placement, where the offender lives outside of a facility and checks in with case workers. The state establishes a per diem rate to contract with local community corrections boards to provide a specific number of beds at the established rate. Table 6 shows the state per diem rate in FY 2021-22 for each placement type.

Table 6
Total State Per Diem by Bed Placement

Placement Type	Total Per Diem
Standard Residential	\$49.16
Cognitive Behavioral Treatment Pilot Program	\$94.07
Intensive Residential Treatment	\$94.85
Inpatient Therapeutic Communities	\$82.14
Residential Dual Diagnosis Treatment	\$83.86
Sex Offender	\$83.86
Standard Non-residential	\$6.65
Outpatient Therapeutic Communities	\$23.86

Source: 2021 Long Appropriations Bill.

Offenders are charged up to \$17 per day for residential placement and up to \$3 per day for nonresidential placements by the community corrections program. Community correction boards and programs are authorized to accept or deny the placement of any offender sentenced to or recommended to a community corrections program. As a result, it is unknown how many offenders will be placed in community corrections instead of serving time in the DOC, parole, prison, or probation, and such fiscal impacts cannot be estimated. To the extent that an offender is sentenced to community corrections instead of the DOC, state expenditures associated with the incarceration of the offender will decrease because community corrections per day operating costs are less than that of the DOC, and the length of stay in community corrections is also shorter.

County Jail

County jails are run by a county sheriff and house defendants awaiting trial (pre-trial detention), misdemeanor and petty offenders sentenced to jail, and offenders who commit a parole violation. Based on a recent study conducted by Joint Budget Committee Staff, the cost to house an offender in a county jail varies from \$43.65 to \$350.21 per day. Under current law, the state reimburses county jails for housing state inmates at a rate set annually in the annual appropriation bill (Long Bill). For the current fiscal year, the state reimburses county jails at a daily rate of \$63.69, generally after the first 72 hours of incarceration. Because jail costs vary by county, it is unknown where future offenses will occur, and the courts have discretion in sentencing an offender to incarceration or imposing a fine, the exact impact of housing an offender in county jail cannot be determined in the fiscal analysis of bills that have a misdemeanor or petty offense with a possible jail sentence.

City and County of Denver

According to state law, Denver County Court is funded and administered by the City and County of Denver, rather than the state trial court system operated by the Judicial Department. Misdemeanor and petty offense cases for offenders arrested in Denver are heard in Denver County Court rather than a state-run county court, and all criminal fine and probation supervision revenue and court and probation supervision expense impacts are local impacts to the City and County of Denver.

Municipal Court

Municipal charters may include criminal offenses that are unique to that municipality. The classifications and penalties for such municipal offenses vary by municipality. Typically, an offender convicted of a municipal offense is ordered to pay a fine. However, some municipal offenses could result in a sentence to county jail. Trials and hearings for such crimes are held in municipal court at the expense of the municipality, with fines and court administrative fees being collected by the municipality. Traffic infractions issued by municipal police, if challenged, are also heard in municipal court. Offenders charged with a municipal crime with a potential jail sentence are entitled to a public defender if they are deemed indigent. All such costs are also paid by the municipality.